



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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In the Matter of the Application of Crimson
California Pipeline L.P. (PLC-26) for Authority to
Increase Rates for Its Crude Oil Pipeline Services.

Application No. 16-03-009
(filed March 11, 2016)

**REPLY OF CRIMSON CALIFORNIA PIPELINE LLP
TO PROTESTS AND COMMENTS REGARDING THE
AMENDMENT TO ITS RATE INCREASE APPLICATION**

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Dated: July 25, 2016

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In accordance with Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Crimson California Pipeline, L.P. (“Crimson California”) hereby respectfully replies to various comments and protests submitted on July 15, 2016 in opposition to Crimson California’s amended application requesting an immediate interim rate increase of 14.3%, subject to refund.

I. BACKGROUND

By amendment dated June 15, 2016, Crimson California asked the Commission to immediately authorize Crimson California to increase its rates for intrastate transportation of crude petroleum by pipeline by 14.3%, subject to refund, pending the Commission’s ultimate disposition of A. 16-03-009.

By letter dated June 15, 2016, the Energy Division informed Crimson California that its Advice Letter No. 16-O, implementing a 10% increase in rates

pursuant to California Public Utilities Code Section 455.3,¹ is deemed effective as of April 1, 2016, subject to refund. In conjunction with the now authorized AL 16-O 10% increase, A. 16-03-009, including the amendment requesting a 14.3% increase, seeks to increase rates by an aggregate total of 60%.²

In response to Crimson California's request for an immediate rate increase of 14.3%, the following parties have filed protests: Tesoro Refining & Marketing Company LLC (Tesoro); Valero Marketing and Supply Company ("Valero"); and Phillips 66 Company ("Phillips 66") (collectively the "Protesting Parties"). The California Independent Petroleum Association ("CIPA") filed comments on the amendment to the application.

II. ALLEGED GROUNDS FOR PROTESTS

The Protesting Parties recite a litany of arguments in opposition to Crimson California's request for interim rate relief, none of which have merit. The asserted reasons for opposing the immediate relief required by Crimson California include the following:

- The California Public Utilities Code makes no provision for the interim rate increase requested by Crimson California;³
- Prior to March 30, 2017 and until the Commission issues a final order in A. 16-03-009, Crimson California cannot further increase its rates by more than the AL16-O 10% increase.⁴

¹ All statutory references are to the California Public Utilities Code.

² Crimson California's amendment seeks to increase its existing authorized rates, which currently reflect the 10% increase set forth in AL 16-O, by 14.3%.

³ Valero Protest at 3; Tesoro Protest at 3-4.

⁴ Valero Protest at 4; Tesoro Protest at 4-5.

- Crimson California has failed to make the showing required to justify its request for an interim rate increase of 14.3%.⁵

In its comments, CIPA seeks clarification regarding the following: (1) the extent of the increase that is the subject of Crimson California's amended application; and (2) the availability of credit facilities to meet Crimson California's capital needs. CIPA also expressed its concern that the Pipeline Loss Adjustment ("PLA") percentage reflected in Crimson's filings is too high.⁶

As set forth below, Crimson California responds to the arguments of the Protesting Parties in opposition to the requested interim rate increase and addresses the comments of CIPA.

III. CRIMSON CALIFORNIA RESPONSE TO PROTESTING PARTIES

A. Both Valero and Tesoro are wrong in arguing that Section 455.3 limits the Commission's authority to issue an order under Section 454 authorizing an interim rate increase for Crimson California.

As Valero readily acknowledges, Crimson California filed A. 16-03-009 pursuant to both Section 454 and Section 455.3.⁷ The 10% rate increase that became effective as of April 1, 2016 was filed pursuant to Section 455.3. The increase in rates beyond the 10% authorized pursuant to Section 455.3, including the interim rate increase of 14.3% that is the subject of Crimson California's amended application, is properly sought pursuant to Section 454.

Valero asserts that Section 455.3 is an "exception" to the Commission's

⁵ Valero Protest at 9-10; Tesoro Protest at 11-18; Phillips 66 Protest at 2-4.

⁶ CIPA Comments at 1-2.

⁷ Valero Protest at 2.

general ratemaking authority as set forth in Section 454, improperly implying that Section 455.3 serves as a constraint on the Commission's general ratemaking authority and limits the Commission's authority to increase pipeline rates by no more than 10% in any twelve-month period.⁸ Valero argues as follows:

Crimson increased its rates by 10 percent effective April 1, 2016 and therefore may not raise its rates again, absent the passage of the statutory 12-month period (i.e. until March 30, 2017) until a final order concluding the proceeding is issued.⁹

Valero is wrong.¹⁰ The Commission's ratemaking authority under Section 454 is independent of (and broader than) its authority under Section 455.3. Section 455.3, by allowing oil pipeline rate increases of 10% or less to go into effect automatically upon 30 days' notice, does provide for an exception from the Section 454 requirement that utility rate increases must first be authorized by order of the Commission. However, the statutory provision allowing oil pipelines to increase rates by 10% automatically in the absence of a Commission order does not operate in any fashion to limit the Commission's ratemaking authority under Section 454 to issue its order, upon a proper showing, approving Crimson California's request for an interim rate increase of 14.3%.

⁸ Valero Protest at 5; Valero effectively argues that the Commission is without legal authority to issue an order authorizing an increase in Crimson California's rates prior to March 30, 2017.

⁹ *Id.*

¹⁰ Tesoro makes an incomprehensible argument that procedurally Crimson California should have filed an advice letter incorporating both the allowed 10% increase and the 14.3% interim rate increase, even though General Order 96-B expressly limits automatic oil pipeline rate increase requests to 10% during any twelve-month period. Tesoro further errs in its assertion that the advice letter mechanism is preferable to the subject application process for the purpose of addressing and resolving contested factual matters.

Valero does accurately cite the provisions of Section 454 as follows:

[A] public utility shall not change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and finding by the commission that the new rate is justified.

Contrary to Valero's assertion,¹¹ Crimson California's interim rate request does not run afoul of the statutory requirements of Section 454. Section 454 requires a showing and a Commission order. There is no requirement that the Commission conduct an evidentiary hearing in order to grant interim relief as requested. Crimson California is in urgent need of the requested rate relief, and law, equity and the balancing of interests favor the Commission's affirmative treatment of Crimson California's request.

Crimson California should not be required to continue to operate at a loss well into 2017 in the absence of financial relief. The interim rate increase, if authorized, will be collected subject to refund. The Protesting Parties will be afforded a full opportunity, including evidentiary hearings, to make their case that some or all of Crimson California's request for rate relief in A.16-03-009 should be disallowed and that some or all of any previously approved rate increases, i.e. the 10% AL 16-O increase and/or the 14.3% interim rate increase, should be refunded.

As set forth in Section IIIC below, Crimson California has made the requisite, sufficient showing in support of its request for an interim rate increase

¹¹ Valero Protest at 6.

of 14.3%, subject to refund. Section 454 quite clearly vests with the Commission all necessary authority to issue its order approving Crimson California's request for immediate rate relief. The Commission should act accordingly.

B. Both Tesoro's and Valero's discussions of legal precedent entirely miss the point.

The issue presented by Crimson California's request for an interim rate increase is whether and the extent to which Crimson California's reasonably incurred operating expenses exceed its reasonably anticipated revenues. To the extent the evidence demonstrates an ongoing shortfall between such operating expenses and revenues, applicable Commission law and policy requires a determination that Crimson California's existing rates are unreasonable.

The cases cited by Crimson California in its request for interim rate relief directly support this bedrock principle of public utility law. It is impermissible under state and federal law to require a public utility to provide service at a loss, much less to countenance the provision of utility service at rates that do not recover the utility's operating expenses.

Phillips 66 recognizes the validity of this basic precept of utility law, stating as follows:

Phillips, nor any party to this proceeding, has advocated that Crimson should be operating its lines at a loss.¹²

Both Tesoro and Valero engage in extensive discussion of the precedents cited by Crimson California in support of its request for rates that allow it, at

¹² Phillips 66 Protest at 4.

least, to recover its reasonable operating expenses. Their confusing and tortuous efforts to describe factual differences between the cited cases and the subject interim rate relief request are irrelevant and unavailing. Their combined arguments do not, in any way, call into question the basic principle that a utility, at a minimum, is entitled by law to recover its reasonable operating expenses.

C. Crimson California has made the showing required to justify its request for interim rate relief.

The Declaration of Michael J. Webb, included as Attachment A to Crimson California's amendment to A. 16-03-009, provides the factual support for the request for an interim rate increase of 14.3%. In particular, the Webb Declaration provides the factual basis for comparing actual operating expenses incurred between April, 2015 through March, 2016 with a reasonable estimate of the annual revenue that Crimson will earn during the pendency of this proceeding, taking into account the 10 percent rate increase that it is already collecting subject to refund.

With regard to calculation of Crimson California's cash operating expenses between April, 2015 and March 31, 2016, the amount of approximately \$33 million reflects the actual cash expenses that Crimson California incurred during the subject period without adjustment based upon the books and records of the company.¹³ With regard to the level of anticipated revenues, adjusted to reflect declines in volume, oil prices, reduced PLA revenues, and the effect of the 10% rate increase, the Webb Declaration supports a reasonable estimation of total

¹³ *Id.* at par. 12.

annual revenues of approximately \$29.6 million.¹⁴ Crimson California's showing in support of the requested interim rate increase, comparing operating expenses with expected revenues, demonstrates that Crimson California annual revenues under the current rates will be approximately \$3.4 million per year¹⁵ less than cash operating expenses. It is this \$3.4 million shortfall that Crimson California seeks to recover by increasing its rates by 14.3%.

The Protesting Parties make various unfounded challenges to the validity of Crimson California's showing in support of the requested interim rate increase. In particular, Tesoro ventures far afield in questioning Crimson California's support for the 14.3% increase.

Tesoro raises concerns that have no relevance to the principal issue presented by Crimson California's interim rate request, i.e. whether and to what extent Crimson California's current revenues fail to collect its reasonable operating expenses. Crimson California's rate base is not an issue relevant to the Commission's consideration of the interim rate request. Indeed, to eliminate precisely this area of controversy, Crimson explicitly limited its request to a rate increase that *did not* include a return on any capital related items. Tesoro's reference to rate-base determinations made in unrelated Commission proceedings

¹⁴ MJW-1; ln. 4.

¹⁵ *Id.*; line 6

has no bearing upon resolution of the instant matter which does not involve recovery of any ratebase-related expenses or return on rate base.¹⁶

Tesoro further devotes three-to-four pages to a clearly irrelevant discussion of Crimson California's recent acquisition of the KLM Pipeline. Tesoro makes no attempt to explain how the KLM acquisition, or any facts related to that acquisition, has any bearing upon the question of reasonable operating expenses and anticipated revenues for the Crimson California pipeline system at issue in the subject matter.

Neither the revenues related to KLM nor the costs associated with operating the KLM are included in Crimson California's estimate of its operating income shortfall for a variety of reasons, not least of which is that Crimson California only acquired KLM in April 2016, well after the base period in this case. Moreover, Tesoro appears to imply that Crimson should use profits from one system, KLM, to subsidize losses on another system, namely the LA Basin system that is subject of this rate case. Such a suggestion clearly violates basic principles of ratemaking. Tesoro's entire discussion in this regard should simply be ignored.

¹⁶ Tesoro mistakenly characterizes its irrelevant argument regarding the Commission's ostensible approach to proper determination of the rate base component of a utility's cost of service as a corrective to improper "rate design concepts" allegedly relied upon by Mr. Webb to support Crimson California's interim rate request. Mr. Webb's declarations do not address any rate design issues, much less rely on "certain rate design concepts." (Tesoro Protest at 12). Nor does determination of the utility's rate base for purposes of establishing the utility's cost of service implicate any aspect of "rate design theory" as Tesoro erroneously suggest.

Valero contends that “Crimson has failed to present a meaningful basis to support its claims of a projected decrease in intrastate throughput.”¹⁷ As set forth in the Declaration of Michael J. Webb included as Attachment A hereto, Valero simply ignores the relevant information regarding throughput decline that has been provided to them. Crimson California’s revenue is a direct function of the volume that it moves on its system. The revenue projections that support Crimson California’s interim rate increase request represent annualized revenue from a recent six-month period (October 2015-March 2016) as reflected in Crimson California’s books and records. Projected revenue declines - and the related volume declines - are set forth in Tables 1-3 of Crimson California’s June 15, 2016 interim rate request filing.

The Webb declaration, as well as the workpapers supporting the Declaration, reflect the volume and related revenue decline underlying Crimson California’s request for interim rate relief. Both the Declaration and the associated workpapers have been provided to the Protesting Parties, including Valero. Valero provides no example of the type of volume information that Crimson California has allegedly failed to provide. Its claim that it has not been provided “meaningful” information relating to projected throughput declines lacks merit.

Dr. Webb’s estimate of throughput volumes and related revenues during the pendency of this rate proceeding incorporates a 5% decline in throughput for the period from October 2015 to October 2016 when compared to the previous

¹⁷ Valero Protest at 9.

historical period Dr. Webb's assumed throughput/volumes, reflecting a 5% decline in throughput consistent with the throughput assumption set forth in A. 16-03-009 as filed by Crimson California in March, 2016 is demonstrably conservative.

As set forth in the Declaration of Larry Alexander, included as Attachment B hereto, analysis of more recent, historical data (January through June, 2016) indicates that Crimson California's volumes for this period have declined by approximately 11% when compared to Crimson California's 2015 recorded throughput for the same period..

Contrary to Valero's assertion, there is no statutory bar to the Commission's immediate issuance of an order approving the requested interim rate increase. Indeed, Section 454 expressly acknowledges the authority of the Commission to issue such an order based upon a proper showing. Crimson California has made just such a proper showing justifying issuance by the Commission of the requested interim order.

Phillips 66 properly limits its protest to issues that are actually relevant to Crimson California's request for interim rate relief. In particular, Phillips 66 questions the validity of Crimson California's showing with regard to Crimson California's estimation of its operating expenses as well as its anticipated revenues. Crimson California does not dispute the rights of Phillips 66, or any other party protesting A. 16-03-009 to examine the full range of contested cost-of-service issues and to do so in the context of evidentiary hearings. Crimson

California, however, disputes any contention that the Commission cannot grant interim relief prior to the conduct of such hearings.

If that were the case, any party could effectively deny an applicant the availability of timely interim relief simply by raising any material issue of disputed fact, thereby triggering the requirement to hold evidentiary hearings. The relevant statutes and the Commission's process do not contemplate such a result. A showing, rather than an evidentiary hearing, is the necessary predicate for Commission action on Crimson California's interim rate request. That showing has been made.

Valero argues that the Commission lacks authority to grant any portion of the requested interim rate relief prior to March 31, 2017. Other Protesting Parties argue that interim relief cannot be granted any time prior to the conduct of evidentiary hearings which are not scheduled until March 6-10, 2017. There is no such limit (timing or otherwise) on the Commission's authority, upon a proper showing, to issue an order authorizing an interim rate increase, subject to refund.

As previously noted, the position of the Protesting Parties effectively bars the remedy of interim rate relief for Crimson California, along with attendant harm to Crimson California relating to unrecoverable operating expenses. Conversely, the correct legal approach, i.e. timely Commission issuance of its interim order, subject to refund, based upon Crimson California's showing, addresses Crimson California's legitimate needs while preserving the rights of shippers to contest any and all elements of any interim rate relief that is authorized and to receive refunds,

with interest, of any portion of the granted interim rate increase that the Commission, following development of a full evidentiary record, subsequently deems to be unreasonable.

IV. CRIMSON CALIFORNIA RESPONSE TO CIPA COMMENTS

Crimson California clarifies that its request for a 14.3% interim rate increase is in addition to the previously authorized and now effective AL 16-O Section 455.3 increase.

With regard to CIPA's inquiry regarding the availability of credit facilities to meet capital needs, Crimson California notes that its request for an interim rate increase of 14.3% is intended to meet the anticipated shortfall between operating expenses and revenues. The requested rate increase is not related to Crimson California's capital needs. Furthermore, it is basic utility law that precludes the use by a utility of a credit facilities to fund expenses reasonably chargeable to operations, unless otherwise specifically authorized by the Commission.¹⁸

With regard to issues relating to the PLA, the grant of interim rate relief will in no way prejudice the rights of CIPA to fully address its concerns and to recommend what it considers to be the appropriate PLA percentage applicable to Crimson California's crude petroleum transportation services.

¹⁸ See Code Section 817-818; e.g. *San Bernardino W.V. Corp.* (1933) 38 C.R.C. 535.

V. CONCLUSION

Crimson California's showing demonstrates that it is currently operating at an annual loss, at a minimum, of \$3.4 million and that its rates at currently authorized levels are unreasonable *per se*.

Both the law and considerations of fairness and equity require immediate Commission action approving Crimson California's request for an interim rate increase of 14.3%. If the interim rate increase is not granted (or if it is delayed until the Commission issue its final decision in A. 16-03-009) and if it is subsequently determined by the Commission that Crimson California is entitled to some or all of its requested interim rate relief, it will be too little, too late for Crimson California. Crimson California will be foreclosed from ever recovering the existing shortfall between revenues and operating expenses which render its current rates unreasonable. Simply stated, failure of the Commission to act on Crimson California's interim rate relief request extinguishes Crimson's opportunity to recover its reasonable operating expenses.


On the other hand, if the interim rate increase is granted, the interests (as well as the claims) of the shipper parties and CIPA remain completely preserved and protected. If the Commission subsequently determines, after a full hearing,, that some or all of the interim rate increase is not justified, such interim rates, collected subject to refund, will be fully refunded to the shippers with interest. If the interim rate request is not acted upon (or delayed indefinitely), Crimson California will be irreparably harmed. Conversely, if the interim rate increase is

granted, the shippers retain every right and opportunity to contest the interim rate increase and to recover, with interest, that portion of any rate ultimately deemed by the Commission to be unreasonable.

The balance of the equities as well as comparison of the financial risks at stake for Crimson California versus the shippers further justifies Commission action to remedy Crimson California's currently unreasonable rates by approving the requested interim rate increase of 14.3%.

Respectfully submitted this 25th day of July, 2016 at San Francisco,
California.

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By 
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ATTACHMENT A

DECLARATION OF MICHAEL J. WEBB

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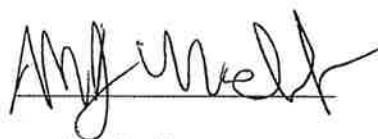
1. My name is Michael J. Webb, PhD. I am the same Dr. Webb who filed a declaration on behalf of Crimson California Pipeline L.P. (“Crimson”) supporting its March 11, 2016 application for rate increase (“March Application”), which followed a January 29, 2016 request by Crimson California to increase its rates by 10 percent, subject to refund (“January Request”). I am also the same Dr. Webb who filed a declaration on behalf of Crimson California supporting its June 15, 2016 request for an interim rate increase of 14.3 percent.
2. I have been asked by Crimson California to prepare a brief response to the assertion of Valero Marketing and Supply Company (“Valero”) that Crimson California did not provide any meaningful information regarding recent volume decline in support of its request for interim rate relief.
3. In my June 15, 2016 declaration, included as Attachment A to Crimson California’s amendment to A. 16-03-009, I provided information showing that even after its 10% rate increase, Crimson California’s revenues will be insufficient to cover its cash operating expenses. The only way that volumes matter in this calculation relates to the impact of volume on revenues. As discussed in ¶ 6 of my June 15, 2016 declaration, continuing volume declines result in continuing transportation revenue declines. As ¶ 9 of my declaration discusses, the continued decline in volume results in continue PLA revenue declines.
4. In both cases, I reflect these revenue declines--and the related volume declines—by annualizing the revenue from October 2015-March 2016. Table 1 of my June 15

declaration shows this calculation with regard to transportation revenue. Table 2 of my June 15 declaration shows this calculation with regards to PLA. The results of these calculations correspond to Adjustments 1 and 3 of Exhibit No. MJW-1. Adjustments 2 and 4 reflect upward adjustments to revenue related to the 10% rate increase and future crude oil prices respectively.

5. Simple review and examination of my declaration and the attached workpapers shows Crimson California did provide relevant information about the impact of continuing volume decline on revenue. Specifically, Crimson California annualized revenue from a recent six month period. This revenue is a direct function of the volume Crimson California moves on its system and was taken directly from the books and records of the company.
6. Valero provides no example of the type of volume information that Crimson California ostensibly failed to provide. Reflecting information from the books and records of the company, and annualizing it in a reasonable way, as Crimson California has done in its filing, provides all of the relevant information required by the Commission. This information has been provided to all parties to A. 16-03-009, including Valero.

The foregoing declaration is submitted under penalty of perjury in accordance with the laws of the State of California.

Dated: July 25, 2016

A handwritten signature in black ink, appearing to read "Michael J. Webb", written over a horizontal line.

Michael J. Webb

ATTACHMENT B

DECLARATION OF LARRY W. ALEXANDER

DECLARATION OF LARRY W. ALEXANDER

1. My name is Larry W. Alexander. I am the President of Crimson California Pipeline L. P. (“Crimson California”). On March 11, 2016, Crimson California filed Application No. 16-03-009 requesting authority to increase rates on certain services by an aggregate total of 60%.
2. Counsel has requested that I provide year-to-date throughput data for the pipeline systems that are the subject of A. 16-03-009 in support of Crimson California’s June 15, 2016 amendment requesting, on an immediate basis, an interim rate increase of 14.3%. In this declaration, I present data that shows a decline in throughput which is substantially greater than what was originally assumed in Crimson California’s March, 2016 filing.
3. In Crimson California’s March, 2016 filing (A. 16-03-009), Crimson California estimated that test year throughput would decline by 5% to 50,900,100 barrels (“BBLs”). This estimate was based on evaluation of Crimson California’s historical throughput, California historical production data, and the commodity price environment.
4. Actual data in the first half of 2016, when annualized, indicates test year throughput of 47,726,020 BBLs, or a year-over-year decline of 10.9%.

Table 1: Estimated Throughput vs. Actual Throughput

Line	Description	Throughput (BBLs)	Decline (%)
1	Base Year Throughput, March Application	53,579,053	N. A.
2	Base Year Throughput (Jan 2015 – Jun 2015)	27,027,359	N.A.
3	Estimated Test Year Throughput, March Application	50,900,100	5.0%
4	YTD Test Year Throughput (Jan 2016 – Jun 2016)	23,863,010	11.7%
5	Annualized Test Year Throughput	47,726,020	10.9%

The foregoing declaration is submitted under penalty of perjury in accordance with the laws of the State of California.

Dated: July 25, 2016

A handwritten signature in dark ink, appearing to read 'LW Alexander', written over a horizontal line.

Larry W. Alexander